

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EMILY HOUTZ,
INDIVIDUALLY AND ON BEHALF OF
ALL OTHERS SIMILARLY SITUATED,
Plaintiff,

v.

PAXOS RESTAURANTS
doing business as
MELT RESTAURANT,
Defendant.

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Civil No. 5:23-cv-00844-JMG

ORDER

AND NOW, this 27th day of December, 2023, upon consideration of Plaintiff’s Motion to Certify Conditionally FLSA Collective Action (ECF No. 25) and Defendant’s Response (ECF No. 26), **IT IS HEREBY ORDERED** that Plaintiff’s Motion (ECF No. 25) is **DENIED without prejudice**.¹ Plaintiff shall file its renewed motion for conditional certification, if any, no later than **Friday, January 19, 2024**.

BY THE COURT:

/s/ John M. Gallagher

JOHN M. GALLAGHER

United States District Court Judge

¹ Defendant has rightly cited to binding Third Circuit case law that sets the bar for preliminary certification of this collective action above mere averments in the Complaint. *See Garcia v. Vertical Screen, Inc.*, 387 F.Supp.3d 598, 603–04 (E.D. Pa. 2019) (citations omitted) (Holding that a plaintiff cannot make a “modest factual showing” based “solely on allegations in the complaint” and must, instead, “provide factual support . . . in the form of affidavits, declarations, deposition testimony, or other [supporting] documents.”).

In Plaintiff’s renewed motion, if any, the Court directs her to address Defendant’s statute of limitations argument. Specifically, does the two- or three-year period apply? And in either case, what is the correct starting point of that period—the time of filing or the time of certification?